



**Billing Code 3410-08-P**

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 402, 407, and 457**

**[Docket No. FCIC-19-0002]**

**RIN 0563-AC61**

**Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance**

**Regulations; and Common Crop Insurance Policy Basic Provisions**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance (ARPI) Basic Provisions, and the Common Crop Insurance Policy (CCIP) Basic Provisions to implement the changes mandated by the Agriculture Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill). This rule revises the provisions regarding the catastrophic administrative fee, actual production history (APH) yield, crop production on native sod, and the definition of veteran farmer or rancher. In addition to the 2018 Farm Bill required changes, FCIC is changing provisions for premium offsets, electronic delivery of policy changes, and assigned yields. The changes to the policy made in this rule are applicable for the 2020 crop year for crops with a contract change date on or after June 30, 2019. For all crops the changes to the policy made in this rule are applicable for the 2021 and succeeding crop years.

**DATES:** Effective: This final rule is effective June 30, 2019.

*Comment Date:* We will consider comments that we receive on this rule by the close of business [insert date 60 days after publication in the *FEDERAL REGISTER*]. FCIC will consider these comments and make changes to the rule if warranted in a subsequent rulemaking.

**ADDRESSES:** We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-19-0002. Follow the online instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change and publicly available on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Francie Tolle; telephone (816) 926-7730; email [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov). Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720-2600 (voice).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Risk Management Agency (RMA) and FCIC (terms used interchangeably) serve America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. RMA is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state and in Puerto Rico through a public-private partnership with RMA. RMA reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. RMA's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance (ARPI) Basic Provisions, and the Common Crop Insurance Policy (CCIP) Basic Provisions to implement the changes mandated by the 2018 Farm Bill (Pub. L. 115-334). The changes to the policy made in this rule are applicable for the 2020 crop year for crops with a contract change date on or after June 30, 2019. For all crops the

changes to the policy made in this rule are applicable for the 2021 and succeeding crop years.

### **Listening Session**

On February 14, 2019, the Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and RMA published a notice in the Federal Register (84 FR 4041-4044) announcing a listening session for initial public input on the changes to existing programs implemented by the agencies. The purpose of the listening session was for each agency to take into account stakeholder input when making discretionary decisions on program implementation. The agencies also announced an opportunity for the public to make written statements through March 1, 2019. The listening session was held on February 26, 2019. The Commodity, Credit, and Crop Insurance titles, and parts of the Conservation, Energy, and Miscellaneous titles were covered during the listening session.

FSA, NRCS, and RMA received 183 written comments from individuals, trade groups, other organizations, and State entities. All written comments are available to the public for review at: <https://www.regulations.gov/document?D=USDA-2019-0001-0001>. In addition to program-specific comments, there were recurring overarching comments about placing a priority on information sharing between agencies for data collection regarding soil health and conservation practices. The issue raised in comments about native sod are discussed below in the section on the native sod changes. Comments included suggestions for the commercialization of industrial hemp, further research of industrial hemp, and the need to implement the 2018 Farm Bill quickly for the industrial hemp industry to thrive.

Statements regarding RMA issues outside the scope of this rule that are not addressed include those about Whole Farm Revenue Protection, yield data for Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs, Dairy Margin Coverage and Livestock Gross Margin-Dairy programs, specialty crop insurance, and the USDA interagency workgroup for cover crops. While not related to this rule, the comments will be considered by RMA when implementing 2018 Farm Bill sections that do not require regulatory changes.

In general, RMA related listening session comments focused on the timing of when the 2018 Farm Bill requirements would go into effect. RMA was urged to issue rules and information as quickly as possible.

### **Mandatory Farm Bill Provisions**

Provisions in the 2018 Farm Bill that require revisions in the FCIC regulations are discussed below.

### **Administrative Fee Changes**

Section 11110 of the 2018 Farm Bill increased the Catastrophic Risk Protection Endorsement Administrative Fee from \$300 to \$655. The Federal Crop Insurance Act mandates that FCIC offer a catastrophic risk protection plan to indemnify producers for crop loss due to loss of yield or prevented planting when the producer is unable to plant other crops for harvest on the acreage for the crop year due to drought, flood, or other natural disaster. Catastrophic risk protection offers a producer coverage for a 50 percent loss in yield, on an individual yield or area yield basis, indemnified at 55 percent of the expected market price. FCIC will pay a premium subsidy equal to the premium established for the coverage provided under this endorsement. However, producers will

pay an administrative fee of \$655 for each crop in the county unless otherwise specified in the Special Provisions. The administrative fee will be updated in the regulation in 7 CFR 402.4, in section 6(b).

### **APH Cup Option**

Section 11112 of the 2018 Farm Bill added the regulatory authority to provide producers with an election to limit the decrease in APH to not more than 10 percent of the prior crop year's APH (cup), provided that the production decline was the result of drought, flood, natural disaster, or other insurable loss; and that FCIC establish actuarially sound premiums to cover the additional risk. The cup option was implemented procedurally in FCIC – 18010 Crop Insurance Handbook on December 2017 for 2018 crops with a Contract Change Date of November 30, 2017, or later.

FCIC is adding the cup option in 7 CFR 457.8 section 36(c) in the CCIP Basic Provisions.

### **Crop Production on Native Sod**

Section 11114 of the 2018 Farm Bill revised the crop production on native sod provisions related to crop insurance. Most provisions (such as the penalties, de minimis acreage, applicable States) for native sod from the Agricultural Act of 2014 (Pub. L. 113-79, 2014 Farm Bill) remain the same. The 2014 Farm Bill provisions were in effect for native sod acreage tilled from February 8, 2014, until December 20, 2018, which was the duration of the 2014 Farm Bill. For native sod acreage tilled after the date of enactment of the 2018 Farm Bill, the native sod reduction in benefits will apply to any insurable crop instead of only to annual crops. The reductions will apply for 4 cumulative crop years on the acreage when a crop is insured, with a limitation of the first 10 years after

initial tillage of the acreage. This means that if the acreage has not met the 4 cumulative crop years of an insured crop on the acreage within 10 crop years after initially tilling the native sod acreage, after the 10th crop year the acreage is no longer subject to the native sod reduction in benefits.

FCIC is revising the definition of “tilled” in the regulation in 7 CFR 407.9 in section 1 and in 7 CFR 457.8 in section 1 to remove the reference to “annual crops” as the native sod provisions are now applicable to any insurable crop rather than just annual crops. FCIC is revising 7 CFR 407.9 section 5(d) and adding a new section 5(f) and 7 CFR 457.8 section 9(e) and adding a new section 9(g) to specify the section applies to native sod acreage that has been tilled and planted during the timeframe of the 2014 Farm Bill until that native sod acreage has reached 4 crop years of planting. The changes also specify the section applies to native sod acreage that has been tilled and planted to an insured crop during 4 cumulative crop years within the first 10 crop years after initial tillage on native sod acreage beginning after December 20, 2018 (the date of enactment of the 2018 Farm Bill).

### **Veteran Farmers or Ranchers**

Section 12306 of the 2018 Farm Bill added a definition of “veteran farmers or ranchers” to the Federal Crop Insurance Act and provided for veteran farmers or ranchers to receive the same benefits as beginning farmers or ranchers. The definition of “veteran farmers or ranchers” is being added in the regulation in 7 CFR 407.9 in section 1 and in 7 CFR 457.8 in section 1. The benefits for a veteran farmer or rancher include:

- Waiving all CAT and additional coverage policy's administrative fees as added in the regulation in 7 CFR 402.4 section 6(c), 7 CFR 407.9 section 7(a)(6)(i), and 7 CFR 457.8 section 7(e)(4)(i);
- Providing additional premium subsidy 10 percentage points greater than the premium subsidy identified in the actuarial documents as added in the regulation in 7 CFR 407.9 section 7(h) and 7 CFR 457.8 section 7(g);
- Allowing use of another person's production history of the specific acreage transferred to the veteran farmer or rancher where the veteran farmer or rancher was previously involved in the decision making or physical activities of a farm or ranch operation insured under CCIP Basic Provisions policies, specifically, FCIC is revising 7 CFR 457.8 section 3(l) to add that notwithstanding any other provision in section 3, if the insured is a veteran farmer or rancher who was previously involved in a farming or ranching operation, including involvement in the decision-making or physical involvement in the production of the crop or livestock on the farm, for any acreage obtained by the veteran farmer or rancher, the veteran farmer or rancher will receive a yield that is the higher of:
  - The actual production history of the previous producer of the crop or livestock on the acreage in which the veteran farmer or rancher was involved; or
  - The applicable transitional yield (T-yield) of the veteran farmer or rancher; and



- Increasing, from 60 to 80 percent of the applicable T-yield, in the substituted yield for yield adjustment when replacing a low actual yield due to an insured cause of loss under CCIP Basic Provisions policies as specified in 7 CFR 457.8 section 36(a)(2).

### **Additional Changes**

In addition to changes statutorily mandated by the 2018 Farm Bill mentioned above, FCIC is making discretionary changes to the ARPI Basic Provisions and CCIP Basic Provisions. These changes are described below.

The changes to the policy made in this rule are applicable for the 2020 crop year for crops with a contract change date on or after June 30, 2019. For all crops the changes to the policy made in this rule are applicable for the 2021 and succeeding crop years.

The additional changes to the ARPI Basic Provisions (7 CFR part 407) and the CCIP Basic Provisions (7 CFR part 457) are as follows:

FCIC is revising 7 CFR 407.9 section 2(j) of the ARPI Basic Provisions and 7 CFR 457.8 section 2(e) of the CCIP Basic Provisions to clarify the provision is only applicable to another crop policy with unbilled administrative fees and premium and that loss credits must first be applied to the policy and crop with the associated claim.

FCIC published a final rule on November 24, 2017, (82 FR 55723-55734) that revised section 2(j) of the ARPI Basic Provisions and section 2(e) of the CCIP Basic Provisions to clarify that with the policyholder's consent the premium and administrative fees can be offset from any prevented planting or indemnity due the policyholder even if the offset occurs before the fees are billed. That allowed insurance providers the latitude to contact the policyholder and inquire as to whether the policyholder would agree to

have the “unbilled” administrative fees and premium offset from the remaining amount of the loss. In response to the 2017 final rule, FCIC received input from the industry.

*Industry input:* Comments FCIC received suggested the rule reversed the longstanding position of allowing pre-billing date claim offsets without consent for the same crop. AIPs stated the industry has consistently taken the view that a policyholder’s consent is not required in order to perform a claim offset prior to the billing date for the same crop. Additionally, AIPs raised concerns that if consent is required for the same (or any) crop to offset premium, the insured could push to have the claim paid prior to the billing date and file for bankruptcy after the claim is paid, which could prevent AIPs from collecting the premium for the same crop on which it had just paid out a claim.

*Response:* The provision as currently written could have unintended consequences that could negatively impact producers if we interpret this provision as consent is required for the same (or any) crop to offset premium. This is because the producers have an expectation that their premium will be automatically offset from indemnities for the same crop and may not anticipate paying premium when it is due. If premium is not received timely, producers are placed on the Ineligible Tracking System, which is an electronic system to identify persons who are ineligible to participate in any program as specified in 7 CFR part 400, subpart U.

Therefore, FCIC is revising the provisions as only applicable to another crop policy with unbilled administrative fees or premium and that loss credits must first be applied to the policy or crop with the associated claim.

The specific changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

FCIC is revising the provisions in sections 3(f) and (g) regarding assigned yields. The industry has expressed concern regarding assigned yields applying to all units of the crop policy. The assigned yield is a policy-level penalty that occurs when an insured's supporting production records do not match their production certification even when the error only applies to one, or an isolated number of actual production history databases.

Currently, an assigned yield reduces an insured's annual yields for the entire crop year, for all units on the policy, to an assigned yield when any annual yield certified by the insured is incorrect. The assigned yield will not exceed 75 percent of the insured's prior year's approved yield. FCIC is revising the language to limit the assigned yield penalty to only those basic unit(s) effected by the incorrect certification.

FCIC is revising section 3(g)(2) to allow an insured to correct, without penalty, inadvertent errors when certifying production. Inadvertent errors include clear numerical transpositions and similar errors made by an insured when certifying their production reports. There are existing regulatory exceptions for inadvertent errors made by an insured for the application, as well as, exceptions for errors made by USDA or AIPs for production reporting. This change also allows an exception for inadvertent producer errors that occur when a producer certifies their production reports.

FCIC is adding a new section 4(d) and revising section 33 to allow that when changes are made to the policy provisions, AIPs will send the changes electronically to the policyholder rather than as a hard copy. Currently a policyholder may individually elect to receive these documents electronically. FCIC is revising the provisions to state all policy provisions, notices, and communications required to be sent by the AIP to the policyholder will be provided by electronic means, unless the AIP does not have the

ability to transmit such information to the policyholder by electronic means or the policyholder elects to receive a paper copy of such information. Therefore, FCIC is adding a new section 4(d) to specify that not later than 30 days prior to the cancellation date for the insured crop that the policyholder will be provided, in accordance with section 33, a copy of the changes to the Basic Provisions, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions. In addition, FCIC is adding a new section 4(e) to specify that acceptance of the changes will be conclusively presumed in the absence of notice from the policyholder to change or cancel insurance coverage. FCIC will also make changes accordingly to the notices required in section 33. These changes will reduce the burden of excess distribution of paper policy materials while still allowing policyholders the option to elect to receive a paper copy.

FCIC is removing the provisions in section 5 regarding exclusion of yields and moving the provisions to section 36 of the revised CCIP Basic Provisions.

Because of the various changes to section 36, FCIC is changing the section heading to “Changes to Yields” as this section will now contain provisions regarding substitution of yields, exclusion of yields, and yield cups. FCIC is moving the provisions regarding exclusion of yields that were previously contained in section 5 to section 36(b).

#### **Effective Date and Notice and Comment**

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* for interested persons to be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation and requires a 30-day delay in the effective date of rules, except when the rule involves a matter relating

to public property, loans, grants, benefits, or contracts. This rule involves matters relating to contracts and therefore the requirements in section 553 do not apply.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule is not a major rule under SBREFA (Pub. L. 104-121). Therefore, RMA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

This final rule is effective June 30, 2019. Although not required by APA, RMA has chosen to request comments on this rule.

#### **Executive Orders 12866, 13563, 13771 and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated as not significant, it is not subject to Executive Order 13771.

### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

## **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

## **Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

**Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

**Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.



## **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FCIC has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes and additions identified in this rule are not expressly mandated by the 2018 Farm Bill.

## **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **Federal Assistance Program**

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

### **Paperwork Reduction Act of 1995**

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053 and 0563-0083.

### **E-Government Act Compliance**

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects**

#### **7 CFR Part 402**

Administrative practice and procedure, Claims, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

#### **7 CFR Part 407**

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

## **7 CFR Part 457**

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

### **Final Rule**

For the reasons discussed above, FCIC amends 7 CFR parts 402, 407, and 457, effective for the 2020 crop year for crops with a contract change date on or after June 30, 2019, and for the 2021 and succeeding crop years for all other crops, as follows:

#### **PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT**

1. The authority citation for 7 CFR part 402 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l) and 1506(o).

2. Amend § 402.4, section 6 as follows:

A. In paragraph (b)(1), remove “\$300” and add “\$655” in its place; and

B. In paragraph (c), remove the words and punctuation “rancher” or a” and add the words and punctuation “rancher,” “veteran farmer or rancher,” or” in their place.

#### **PART 407— AREA RISK PROTECTION INSURANCE REGULATIONS**

3. The authority citation for 7 CFR part 407 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l) and 1506(o).

4. Amend § 407.9 as follows:

A. Amend section 1 as follows:

i. In the definition of “tilled”, remove “an annual crop” and add “a crop” in their place; and

ii. Add the definition of “veteran farmer or rancher” in alphabetical order;

B. Amend section 2 as follows:

i. In paragraph (j) introductory text, remove “due” and add “owed” in its place in the first instance where the word occurs in the paragraph;

ii. Remove paragraph (j)(2); and

iii. Redesignate paragraph (j)(3) as paragraph (j)(2);

C. Amend section 5 as follows:

i. Revise paragraph (d), introductory text; and

ii. Add paragraph (f);

D. Amend section 7 as follows:

i. In paragraph (a)(6)(i), add “, or veteran farmer or rancher” at the end of the sentence; and

ii. In paragraph (h), remove “rancher, your” and add “rancher, or veteran farmer or rancher, your” in their place;

The revisions and additions read in part as follows:

**§ 407.9 Area risk protection insurance policy.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

*Veteran farmer or rancher.* An individual who has served on active duty in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, was discharged or released under conditions other than dishonorable, and:

- (1) Has not operated a farm or ranch;
- (2) Has operated a farm or ranch for not more than 5 years; or
- (3) First obtained status as a veteran during the most recent 5-year period.

A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify as a veteran farmer or rancher. A spouse's veteran status does not impact whether an individual is considered a veteran farmer or rancher.

\* \* \* \* \*

#### 5. Insurable Acreage

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(d) Except as provided in section 5(e), and in accordance with section 5(f), in the states of Iowa, Minnesota, Montana, Nebraska, North Dakota, or South Dakota, native sod acreage may be insured if the requirements of section 5(a) have been met but will:

\* \* \* \* \*

(f) Section 5(d) is applicable during the first 4 crop years of planting on native sod acreage that has been tilled beginning on February 8, 2014, and ending on December 20, 2018. Section 5(d) is applicable during 4 cumulative crop years of insurance within the first 10 crop years after initial tillage on native sod acreage tilled after December 20, 2018.

### **PART 457 - COMMON CROP INSURANCE REGULATIONS**

5. The authority citation for part 457 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l) and 1506(o).

6. Amend § 457.8 as follows:

A. Amend section 1 as follows:

i. In the definition of “tilled,” remove “an annual crop” and add “a crop” in its place;

ii. Add the definition of “veteran farmer or rancher” in alphabetical order;

B. Amend section 2 as follows:

i. In paragraph (e) introductory text, remove “due” and add “owed” in its place in the first instance where the word occurs;

ii. Remove paragraph (e)(2); and

iii. Redesignate paragraph (e)(3) as paragraph (e)(2);

C. Amend section 3 as follows:

i. In paragraph (f)(1), remove “for the previous crop year” in the first sentence;

ii. In paragraph (g)(2)(i) remove “or”;

iii. Revise paragraph (g)(2)(ii);

iv. Add paragraph (g)(2)(iii);

v. Revise paragraphs (g)(3) and (g)(4)(i); and

vi. In paragraph (l), remove the word “rancher” and add “rancher, or veteran farmer or rancher” in its place;

D. Amend section 4 as follows:

i. Revise paragraph (d); and

ii. Add paragraph (e);

E. Remove and reserve section 5;

F. Amend section 7 as follows:

i. In paragraph (e)(4)(i), remove the word “rancher” and add “rancher, or veteran farmer or rancher” in its place; and

ii. In paragraph (g), remove the word “rancher” and add “rancher, or veteran farmer or rancher,” in its place;

G. Amend section 9 as follows:

i. Revise paragraph (e), introductory text; and

ii. Add paragraph (g);

H. Amend section 33 as follows:

i. Revise paragraph (b);

I. Amend section 36 as follows:

i. Revise the heading;

ii. Redesignate paragraphs (b) through (e) as paragraphs (a)(1) through (4);

iii. In newly redesignated paragraph (a)(2), remove “rancher” and add “rancher, or veteran farmer or rancher” in its place; and

iv. Add new paragraphs (b) and (c).

The revisions and additions read as follows:

**§ 457.8 The application and policy.**

\* \* \* \* \*

*Common Crop Insurance Policy*

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

*Veteran farmer or rancher.* An individual who has served active duty in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, was discharged or released under conditions other than dishonorable, and:

- (1) Has not operated a farm or ranch;
- (2) Has operated a farm or ranch for not more than 5 years; or
- (3) First obtained status as a veteran during the most recent 5-year period.

A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify as a veteran farmer or rancher. A spouse's veteran status does not impact whether an individual is considered a veteran farmer or rancher.

\* \* \* \* \*

### 3. Insurance Guarantees, Coverage Levels, and Prices

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) Because the incorrect information was determined to be inadvertently reported by you (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(iii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) If you do not have written verifiable records to support the information you certified on your production report, you will receive an assigned yield in accordance with



section 3(f)(1) and 7 CFR part 400, subpart G, for the applicable units, determined by us, for those crop years for which you do not have such records. If the conditions of section 34(c)(3) are not met, you will receive an assigned yield for the applicable basic unit.

(4) \* \* \*

(i) We will correct your approved yield, in accordance with FCIC procedure, by assigning a yield or by using the yield we determine to be correct, for the crop year such information is not correct, and all subsequent crop years;

\* \* \* \* \*

#### 4. Contract Changes.

\* \* \* \* \*

(d) Not later than 30 days prior to the cancellation date for the insured crop you will be provided, in accordance with section 33, a copy of the changes to the Basic Provisions, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions.

(e) Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

\* \* \* \* \*

#### 9. Insurable Acreage.

\* \* \* \* \*

(e) Except as provided in section 9(f), and in accordance with section 9(g), in the states of Iowa, Minnesota, Montana, Nebraska, North Dakota, or South Dakota, native sod acreage may be insured if the requirements of section 9(a) have been met but will:

\* \* \* \* \*

(g) Section 9(e) is applicable during the first 4 crop years of planting on native sod acreage that has been tilled beginning on February 8, 2014, and ending on December 20, 2018. Section 9(e) is applicable during 4 cumulative crop years of insurance within the first 10 crop years after initial tillage on native sod acreage tilled after December 20, 2018.

\* \* \* \*

### 33. Notices.

\* \* \* \*

(b) All policy provisions, notices, and communications that we send to you will be:

(1) Provided by electronic means, unless:

(i) We do not have the ability to transmit such information to you by electronic means; or

(ii) You elect to receive a paper copy of such information;

(2) Sent to the location specified in your records with your crop insurance agent;

and

(3) Will be conclusively presumed to have been received by you.

\* \* \* \*

### 36. Changes to Yields.

\* \* \* \*

(b) If provided in the actuarial documents, you may elect to exclude any actual yield for any crop year when FCIC determines for a county, or its contiguous counties,

the per planted acre yield was at least 50 percent below the simple average of the per planted acre yield for the crop in the county for the previous 10 consecutive crop years.

(c) If provided in the actuarial documents, you may elect to limit a reduction to the approved APH yield to a maximum decline of 10 percent of the previous crop year's approved APH yield when such reduction is due to a decline in production resulting from a natural disaster or other insurable loss, as provided in FCIC procedures.

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